

JACQUELINE E. NELSON

IBLA 80-382

Decided April 10, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claim null and void. CA MC 59566.

Affirmed.

1. Mining Claims: Determination of Validity -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

APPEARANCES: Jacqueline E. Nelson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a decision dated January 26, 1980, rendered by the California State Office, Bureau of Land Management (BLM), declaring the Little Beaver placer mining claim (CA MC 59566) null and void. The claim was located in the SW 1/4 NE 1/4 sec. 10, T. 10 N., R. 12 E., Mount Diablo meridian, California, on November 30, 1979. BLM declared the claim null and void because its land status records showed it was located on land withdrawn from mining locations, inter alia, by BLM order of February 26, 1952, for the American River Dam, Central Valley Bureau of Reclamation Project, under a first form withdrawal, pursuant to section 3 of the Act of June 17, 1902, 32 Stat. 388 (43 U.S.C. §§ 371, 416 (1976)).

Appellant asserts that the lands in issue were withdrawn without justification are not being utilized for reclamation purposes, are within 300 yards of an active mining claim, and completely surrounded by privately-owned lands, and should be restored to public entry.

[1] Because of the withdrawal in 1952 the land was not available for the filing of mining claims thereafter. Where a mining claim is

located on land previously withdrawn from appropriation under the mining laws, an attempt to locate a mining claim on such land is a nullity and the claim is properly declared null and void ab initio. Leo J. Hottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970); Tilden Holloway, 43 IBLA 134 (1979); Gerald Byron Bannon, 40 IBLA 162 (1979); Harry R. Wilson, 35 IBLA 349 (1978). Appellants offer no challenge to the withdrawn status of the lands i.e., a first withdrawal 1/ as reflected by BLM records.

The Department has held that a withdrawal remains in effect until it is revoked, even though the purpose of the withdrawal may have been fulfilled. Grace Kinsela, 74 I.D. 386 (1967); David W. Harper, 74 I.D. 141 (1967); see also Oliver and Robert A. Reese, 4 IBLA 261 (1972). Thus the nonuse or the unsuitability of the lands for the purpose of the withdrawal is irrelevant to the continued efficacy of the withdrawal. See Wendell L. Garrett, d.b.a., Garrett Industries, 39 IBLA 85 (1979).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

1/ Land in a second form withdrawal for reclamation purposes is not thereby closed to mining locations. H. G. Johnson, 78 I.D. 107 (1971). Cf. Russ Journigan, 16 IBLA 79 (1974).

In the instructions of June 6, 1905; 33 L.D. 607 (1905), first form withdrawals embrace lands which "may possibly be needed in the construction and maintenance of irrigation works, and other commonly known as 'withdrawals under the second form' which embraces lands not supposed to be needed in the actual construction and maintenance of irrigation works, but which may possibly be irrigated from such works."

